

MATHEW WETNI -V- MAVING BROS TIMBER COMPANY LIMITED

**HIGH COURT OF SOLOMON ISLANDS
(PALMER J.)**

CIVIL CASE NO: 330 OF 1999

HEARING: 1ST MARCH 2000

RULING: 1ST MARCH 2000

P. TEGAVOTA FOR THE APPLICANT/DEFENDANT

C. ASHLEY FOR THE RESPONDENT/PLAINTIFF

PALMER J.: This is an application by the Defendant by Summons filed 17th January 2000 to have *inter alia*, the Writ of Execution issued against the defendant stayed and the default judgment entered on 16th November 1999 set aside. The Defendant does not dispute that the default judgement obtained on 16th November 1999 was not improperly obtained. What it seeks to point out to this Court was that the Writ of Summons had not been forwarded to its Office or brought to its attention, by the accounting firm whose address is recorded as the registered office of the Company. It could not enter appearance and defence therefore within the required time periods until the writ of execution was served on it. In the affidavit of Ling Chung Kok, General Manager of the Company filed 17 January 2000, it is sought to be argued the Defendant has a viable defence against the claim of the Plaintiff.

The Plaintiff claims in essence wrongful termination of his employment contract with the Defendant dated from 3rd June 1999 to 3rd June 2000. He claims he was terminated on or about 29 June 1999. Accordingly he should be paid the remainder of his salary and other entitlements up to 3rd June 2000. This he worked out to amount to \$40,980-00.

The Defendant on the other hand argues the contract of employment with the Plaintiff was only from 3rd June 1998 to 3rd June 1999 (*see "Exhibit LCK 3" annexed to the affidavit of Ling Chung Kok filed 17 January 2000*). After contract expired on 3rd June 1999, the Company did not renew its contract with the Plaintiff on the ground it had no more work to offer to the Plaintiff, due to the ethnic tension on Guadalcanal and a court injunction taken out against the Company on its operations at Pavuvu, Russell Islands. The Plaintiff therefore was paid all his entitlements up to 3rd June 1999 and informed by letter dated 29 June 1999 of the actions of the Company. It felt accordingly it had no outstanding liability owed to the Plaintiff and should therefore be allowed to defend this case.

The Plaintiff in his response argues this is not a viable defence. With respect I must disagree. The issue for determination at the heart of this case in my respectful view, turns on the question whether the contract of employment ("*Exhibit LCK 3*") was renewed after it expired on 3rd June 1999 or not. The Defendant argues it was never renewed after expiry, whilst the Plaintiff argues it was renewed to 3rd June 2000. In my respectful view this raises triable issue which in the interest of justice, the Company must be given opportunity to defend on the merits.

As to the question of delay, that was caused by the accounting firm not carrying out its obligation to the Defendant. That is a matter between themselves to sort out. Had I been satisfied there was no viable defence, the summons of the Defendant would have been dismissed. In any event, I am satisfied the Defendant must bear the costs of the Plaintiff to date of this judgement.

ORDER OF THE COURT:

1. **STAY WRIT OF EXECUTION ISSUED AGAINST THE DEFENDANT.**
2. **SET ASIDE DEFAULT JUDGEMENT ENTERED ON 16TH NOVEMBER 1999.**
3. **APPEARANCE AND STATEMENT OF DEFENCE TO BE FILED WITHIN 7 DAYS HEREAFTER.**
4. **THE DEFENDANT TO BEAR THE COSTS OF THE PLAINTIFF TO DATE.**

THE COURT